

Child & Family Service, Petitioner and United Public Workers, AFSCME, Local 646, AFL-CIO.
Case AO-315

September 29, 1994

ADVISORY OPINION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on August 24, 1994, Child and Family Service (the Employer), filed a petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A proceeding, Case 94-4(CE), is currently pending before the Hawaii Labor Relations Board (HLRB) in which the Union alleges that the Employer violated the terms of a collective-bargaining agreement by failing to apply the contract between the Employer and the Union to employees of the Employer located on islands other than the Island of Oahu in the State of Hawaii.

2. The Employer is a private, nonprofit organization that provides social and welfare services within the State of Hawaii and provides a wide range of social/human services within the State of Hawaii. The Employer is not an agency of a Federal or state government, or a subdivision of a Federal or state government.

3. During the past fiscal year, the Employer had gross revenues in excess of \$9 million, and purchased goods and services valued in excess of \$25,000 directly from outside the State of Hawaii and from persons who purchased them from points outside the State. In addition, the Employer has received revenues in excess of \$2 million from the United States Government.

4. The Employer believes that neither the Union nor the HLRB disputes the aforesaid commerce data.

5. The HLRB issued a decision on August 16, 1994, in Case 94-4(CE), denying the Employer's motion to dismiss the unfair labor practice complaint. In its decision, the HLRB found that the Employer had gross revenues of over \$9 million in fiscal year 1992 and that the Employer would otherwise meet the National Labor Relations Board's jurisdictional requirements for nonprofit organizations, but held that the HLRB has continuing jurisdiction over the Employer, based on a certification of the Union as the representative of certain employees of the Employer by the Hawaii Employment Relations Board, the predecessor of the HLRB, on July 11, 1975, in Case 74-29, until the NLRB asserts jurisdiction over the matter. The HLRB

scheduled a hearing for September 2, 1994, in Case 94-4(CE).

6. There are no representation or unfair labor practice proceedings involving the Employer pending before the NLRB involving the same labor dispute. The Employer has filed a charge against the Union in Case 37-CB-1134 alleging a refusal to bargain in violation of Section 8(b)(3) of the Act, but that refusal-to-bargain charge does not involve the same issue as that pending before the HLRB, to wit, the status of employees of the Employer on islands other than the Island of Oahu.

On September 7, 1994, the Union filed a memorandum in opposition to the petition for Advisory Opinion. The Union argues, *inter alia*, that because the HLRB asserted jurisdiction over the Employer in the representation proceeding in 1975, when the NLRB was declining to assert jurisdiction over such nonprofit organizations, the Petitioner is precluded by the doctrines of *res judicata* and collateral estoppel from seeking to relitigate the jurisdictional facts. Accordingly, the Union argues, the NLRB should deny any effort to raise the issue of the NLRB's jurisdiction over the Employer. In its brief in support of the petition, however, the Employer argues, *inter alia*, that the NLRB was not involved in the HLRB's 1975 assertion of jurisdiction over the Employer, and that the Union's argument that the NLRB's assertion of jurisdiction is now precluded by *res judicata* or collateral estoppel is misplaced, frivolous, and without any legal support.

Having duly considered the matter,¹ the Board is of the opinion that, based on the foregoing commerce data, it would assert jurisdiction over the Employer.² Contrary to the Union's contention, the fact that the HLRB previously has asserted jurisdiction over the Employer does not preclude the NLRB from asserting jurisdiction at a later date.³ Further, although the Board has a longstanding policy, based on sound principles of administrative efficiency and economy, that a petition for advisory opinion will not be entertained when an unfair labor practice proceeding is pending before the NLRB and there is no need for a more expeditious jurisdictional determination,⁴ here there is a hearing before the HLRB scheduled for September 2, 1994, in Case 94-4(CE) which would warrant an expeditious jurisdictional ruling. Under these circumstances, we find it appropriate to issue the requested opinion.

¹ The Board has delegated its authority in this proceeding to a three-member panel.

² *United Way of Howard County*, 287 NLRB 987 (1988); *Hispanic Federation for Social Development*, 284 NLRB 500 (1987) (\$250,000 standard applied for such organizations).

³ See *Beers Guidance Clinic*, 266 NLRB 89 (1983).

⁴ *Inter-Neighborhood Housing Corp.*, 311 NLRB 1342 (1993); *Riv Realty*, 267 NLRB 325 (1983).

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.⁵

⁵The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's oper-

ations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the current unit under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.